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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lightstone De Deus Express Trust,

10 Plaintiff,

11 v.

12 Wells Fargo & Company, et al.,

13 Defendants.
14

No. CV-22-01497-PHX-SMM

ORDER

15 Pending before the Court are Defendants’ Motion to Dismiss (Doc. 6), Plaintiff’s
16 Request that the Court issue a writ of praecipe (Doc. 24) and Plaintiff’s self-styled “Bill
17 To Be Heard,” which the Court construes as a Motion for Hearing or Conference (Doc.
18 25). The Court denies Plaintiff’s Request and Motion for Hearing or Conference and will
19 issue an order as to the Motion to Dismiss at a later date.

20 Request

21 In his Request, Plaintiff asks the Court to issue and serve a writ of praecipe ordering
22 Defendants to show cause as to three perceived wrongdoings. (Doc. 6).

23 First, Plaintiff asks the Court to “command[] the Defendant[s] to explain why they
24 have breached the contract with Plaintiffs stated in initial Bill of Complaint...” (Id. at 1).
25 However, Defendants have already addressed Plaintiff’s breach of contract claims in their
26 Motion to Dismiss. (Doc. 6 at 2).

27 Second, Plaintiff asks the Court to order Defendants to show cause as to why
28 Defendants have “not returned payments within 90 days as prescribed by Arizona law 47-

1 3311.” (Id.) That state statute covers accord and satisfaction, which Defendants have
 2 addressed in their Motion to Dismiss. (Doc. 6 at 5-6).

3 Finally, Plaintiff asks the Court to order Defendants to show cause as to why they
 4 did not “follow Federal Rules of Civil Procedure Eight.” (Id. at 1-2). Plaintiff appears to
 5 construe Rule 8(c)(1) as mandating that a defendant’s responsive pleading must state
 6 affirmative defenses, including the statute of frauds, accord and satisfaction, and fraud.
 7 (Doc. 24 at 2). Plaintiff is mistaken. Defendants must only raise these affirmative defenses
 8 in their responsive pleadings if they plan on raising them at all. Here, Defendants do indeed
 9 raise a statute of frauds defense. (Doc. 6 at 2). Defendants do not raise the others
 10 presumably because they chose not to. They are under no obligation to raise the defenses
 11 listed under Rule 8(c)(1).

12 Bill To Be Heard

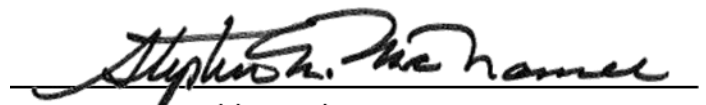
13 Plaintiff appears unaware the Defendants have submitted a responsive pleading
 14 (Doc. 26) to Plaintiff’s complaint, which was filed in state court and removed by
 15 Defendants on September 6, 2022 (Doc. 1). Plaintiff’s complaint will be addressed by this
 16 Court when it issues an order on Defendants’ Motion to Dismiss. If Plaintiff desires an oral
 17 argument, he had the chance to request one when filing his Response to the Motion to
 18 Dismiss (Doc. 22), pursuant to Local Rule 7.2(f). Regardless, the Court does not see the
 19 need for an oral argument at this stage.

20 Accordingly,

21 **IT IS HEREBY ORDERED denying** Plaintiff’s Request. (Doc. 24).

22 **IT IS FURTHER ORDERED denying** Plaintiff’s Motion for Hearing or
 23 Conference. (Doc. 25).

24 Dated this 9th day of December, 2022.

25 
 26 Honorable Stephen M. McNamee
 27 Senior United States District Judge
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